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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2014-2015

CR-14-0276

James E. Bagley

v.

State of Alabama

Appeal from Etowah Circuit Court
(CV-14-131.60)

KELLUM, Judge.

James E. Bagley appeals the circuit court's summary dismissal of what he styled as a "Petition [for] Writ of Habeas Corpus Ad Testificandum." (C. 10.)

Bagley filed his petition on October 27, 2014. His petition is disjointed, confusing, and virtually incoherent. Nonetheless, after thoroughly reviewing the petition, it appears that Bagley raised claims cognizable in a Rule 32, Ala. R. Crim. P., petition for postconviction relief. Catchphrases such as due process, lack of jurisdiction to render judgment and to impose sentence, involuntary guilty plea, double jeopardy, and newly discovered evidence appear in his petition. Additionally, Bagley attached to his petition a copy of this Court's opinion affirming his 1995 guilty-plea convictions for two counts of first-degree theft of property and his resulting sentences of seven years' imprisonment for each conviction. See Bagley v. State, 681 So. 2d 262 (Ala. Crim. App. 1995). Therefore, Bagley's petition must be treated as a Rule 32 petition attacking his 1995 convictions and sentences. See, e.g., Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002) (holding that appellate courts must treat a motion according to its substance, not its style).

With his petition, Bagley filed an affidavit of substantial hardship, and the circuit court granted Bagley indigency status. In addition, Bagley filed his petition in

Etowah County, the county of his 1995 convictions and sentences. Therefore, the Etowah Circuit Court had jurisdiction to treat Bagley's petition as a Rule 32 petition for postconviction relief and to rule on that petition, and we believe that is exactly what the circuit court did. The record reflects that, without receiving a response from the State, the circuit court summarily dismissed Bagley's petition on November 3, 2014, stating "JAMES E. BAGLEY'S PETITION FOR WRIT OF HABEAS CORPUS ADTESTIFICANDUM is hereby DENIED." (C. 35; capitalization in original.) The court's order -- which is a commonly used standardized fill-in-the-blank form -- identified Bagley's petition according to the style of the petition. However, circuit judges "are presumed to know the law and to follow it in making their decisions." Ex parte Slaton, 680 So. 2d 909, 924 (Ala. 1996). The circuit court's identification of Bagley's petition according to its style is not alone sufficient to overcome the presumption that the circuit court followed the law when dismissing Bagley's petition. Moreover, nothing else in the record affirmatively indicates that the circuit court did not properly treat Bagley's petition as a Rule 32 petition and summarily dismiss

it. In the absence of any affirmative indication otherwise, we presume that the circuit court properly treated Bagley's petition as a Rule 32 petition for postconviction relief and summarily dismissed it.

Moreover, even if the circuit court did improperly treat Bagley's petition as a petition for a writ of habeas corpus, it is well settled that, with limited exceptions not applicable here, this Court may affirm a circuit court's judgment if it is correct for any reason. See Bryant v. State, [Ms. CR-08-0405, February 4, 2011] ___ So. 3d ___ (Ala. Crim. App. 2011); Moody v. State, 95 So. 3d 827, 833 (Ala. Crim. App. 2011), and McNabb v. State, 991 So. 2d 313, 333 (Ala. Crim. App. 2007), and the cases cited therein. For the reasons explained below, summary dismissal of Bagley's petition was appropriate.

In his brief on appeal, Bagley appears to pursue the claims from his petition. Bagley's brief is as disjointed, confusing, and incoherent as is his petition,¹ but contains catchphrases similar to those found in his petition. His

¹Bagley's brief is a conglomeration of handwritten pages and copies of various documents from the record, and we seriously question whether his brief satisfies the requirements in Rule 28, Ala. R. App. P.

brief also contains additional catchphrases that we are unable to find in his petition. To the extent that Bagley is attempting to raise on appeal claims that were not included in his petition, those claims are not properly before this Court for review and will not be considered. See Arrington v. State, 716 So. 2d 237, 239 (Ala. Crim. App. 1997) ("An appellant cannot raise an issue on appeal from the denial of a Rule 32 petition which was not raised in the Rule 32 petition."). To the extent that Bagley is attempting to reassert on appeal the claims from his petition, Bagley is entitled to no relief. As noted above, Bagley's petition was virtually incoherent. After thoroughly reviewing the petition, we are unable to ascertain exactly what arguments Bagley was attempting to raise. A petition as confusing and incoherent as Bagley's necessarily fails to satisfy the pleading requirements in Rule 32.3, Ala. R. Crim. P., which provides that "[t]he petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief," and Rule 32.6(b), Ala. R. Crim. P., which provides that "[t]he petition must contain a clear and specific statement of the grounds upon which

relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law shall not be sufficient to warrant any further proceedings."

We note that, in his reply brief on appeal, which is more coherent than his initial brief, Bagley appears to request that we treat his petition as a Rule 32 petition for postconviction relief and remand this cause for the circuit court to allow him the opportunity to file his petition using the proper Rule 32 form and then to reconsider the petition. However, in Maddox v. State, 662 So. 2d 915 (Ala. 1995), the Alabama Supreme Court explained:

"'Just as Rule 32.7(d) (allowing summary dismissal of a petition) overrides, in some cases, the Rule 32.7(a) requirement that the prosecutor file a response, see Bishop v. State, 608 So.2d 345, 347-48 (Ala.1992), ... Rule 32.7(d) also takes precedence, in some cases, over the Rule 32.6(a) requirement that the petition be filed on the proper "form." ... [B]lind adherence to the holding of Drayton v. State, 600 So. 2d 1088 (Ala. Cr. App. 1992), is a literal exaltation of form over substance.

"'It is ridiculous to remand [a] cause so that the appellant will have the opportunity to file a petition in the

proper form that will be promptly dismissed.'" "

662 So. 2d at 916 (quoting Maddox v. State, 662 So. 2d 914, 915 (Ala. Crim. App. 1993) (Bowen, J., dissenting)). Summary dismissal of Bagley's petition was appropriate in this case for the reasons stated above. Therefore, "[i]t [would be] ridiculous to remand this cause so that [Bagley] will have the opportunity to file a petition in the proper form that will be promptly dismissed." Id.

Rule 32.7(d), Ala. R. Crim. P., authorizes the circuit court to summarily dismiss a petitioner's Rule 32 petition

"[i]f the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings"

See also Hannon v. State, 861 So. 2d 426, 427 (Ala. Crim. App. 2003); Cogman v. State, 852 So. 2d 191, 193 (Ala. Crim. App. 2002); Tatum v. State, 607 So. 2d 383, 384 (Ala. Crim. App. 1992). Because Bagley's petition failed to satisfy the pleading requirements in Rule 32.3 and Rule 32.6(b), summary disposition of Bagley's Rule 32 petition was appropriate.

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Based on the foregoing, the judgment of the circuit court is affirmed.

AFFIRMED.

Welch and Joiner, JJ., concur. Windom, P.J., dissents. Burke, J., dissents, with opinion.

BURKE, Judge, dissenting.

I respectfully dissent. James E. Bagley appeals the Etowah Circuit Court's summary denial of his pro se petition for postconviction relief. The petition was filed as a civil action and styled as a "petition [for] writ habeas corpus ad testificandum." The arguments in the petition are very difficult to discern. The petition appears to challenge Bagley's 1995 guilty-plea convictions for two counts of first-degree theft of property, violations of § 13A-8-3, Ala. Code 1975, and his resulting sentences of seven years in prison, to be served concurrently.

On direct appeal, after initially remanding the case for the trial court to determine the specific terms of the guilty-plea agreement, this Court affirmed Bagley's convictions and sentences on January 19, 1996. See Bagley v. State, 681 So. 2d 262 (Ala. Crim. App. 1995). The Alabama Supreme Court denied certiorari review, and the certificate of judgment was issued on September 6, 1996.

The instant petition was filed in 2014. In this petition, as best I can discern, Bagley made the following allegations: (1) "Petitioner is being unlawfully restrained

against his liberty that is granted to him by the Eighth Amendment of the United States Constitution about false imprisonment"; (2) "petitioner is being unlawfully restrained against his Eighth Amendment right to excessive bail"; (3) "the jury in my trial was 10 whites and two black[, which is a] violation under the Boston [sic] v. Kentucky"; (4) "the facts upon which were not known by the petitioner or the petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence"; (5) "the facts establish that the petitioner is innocent of the crime for which the petitioner was convicted or should not have received the sentence that petitioner received"; (6) "I have no copy with me in the Etowah County Jail been held without bond or no court date for the Alabama Department of Corrections"; (7) "the court was without jurisdiction to render judgment or to impose sentence"; (8) "newly discovered from Alabama criminal appeal exist which require that the conviction or sentence be vacated the sentence court"; and (9) "my civil rights been violated

the individual right of personal liberty guaranteed by the Bill of Right and the 13th, 15th, and 19th Amendment as well by legislation such as the voting right act civil right include esp the right to vote, the right of due-process and the right of equal protection under the law." (C. 10-23.)

Without waiting for a response from the State, the circuit court summarily denied Bagley's petition on November 3, 2014. The circuit court stated: "James E. Bagley's petition for writ of habeas corpus ad testificandum is hereby denied." (C. 35.)

Bagley did not file the standard Rule 32 form, and, as noted earlier, his petition was filed as a civil action and styled as a "petition [for] writ habeas corpus ad testificandum." However, "'[t]he substance of a motion and not its style determines what kind of motion it is.'" Ex parte Deramus, 882 So. 2d 875, 876 (Ala. 2002) (quoting Evans v. Waddell, 689 So. 2d 23, 26 (Ala. 1997)). Here, Bagley filed the petition in the court in which he was convicted of two counts of first-degree theft of property in 1995. Further, the petition appears to challenge those two convictions and to state grounds that are recognized under Rule 32, Ala. R. Crim.

P. Therefore, Bagley's petition should be treated as a Rule 32, Ala. R. Crim. P., petition for postconviction relief. It appears that the instant petition is Bagley's sixth Rule 32 petition.

Upon consideration of the above, I would direct the circuit court to set aside its earlier ruling denying the petition for a writ of habeas corpus and to treat the petition as a petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P. I further note that it would be within the circuit court's discretion to require Bagley to refile his petition on the form provided in the appendix to Rule 32, Ala. R. Crim. P., provided that the circuit court allow Bagley a reasonable time to refile a properly verified Rule 32, Ala. R. Crim. P., petition on the proper form. Furthermore, if the circuit court found that Bagley is continually filing petitions for postconviction relief in which his claims are precluded or completely without merit, the court could consider adopting sanctions against Bagley. As Judge Kellum has stated:

"I believe that allowing [the petitioner] to file multiple petitions for postconviction relief in which his claims are either precluded or without merit wastes scarce judicial resources. Therefore,

I would encourage the circuit court to consider adopting sanctions like those proposed in Peoples v. State, 531 So. 2d 323 (Ala. Crim. App. 1988), and Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986), to prevent future frivolous litigation on the part of [the petitioner] and other similarly situated inmates. See Ex parte Thompson, 38 So. 3d 119 (Ala. Crim. App. 2009)."

Bennett v. State, 77 So. 3d 174 (Ala. Crim. App. 2011) (Kellum, J., concurring specially).

Although there is no evidence in the record indicating that the circuit court treated Bagley's petition as a Rule 32 petition, the majority's opinion concludes, with a great deal of certainty, that the circuit court treated Bagley's petition as a Rule 32 petition. The majority reaches this conclusion by pointing out that, other than the fact that the circuit court's type written order² explicitly stated that it was denying a petition for a writ of habeas corpus and the fact that the petition was docketed and treated as a civil action, "nothing else in the record affirmatively indicates that the circuit court did not properly treat Bagley's petition as a Rule 32 petition." In other words, there are at least two

²The majority opinion refers to the circuit court's order as "a commonly used standardized fill-in-the-blank form." However, the only blank on the order is where the circuit judge electronically signed his name. (C. 35.)

facts in the record indicating that the circuit court did not treat Bagley's petition as a Rule 32 petition and there are zero facts in the record indicating that the circuit court treated Bagley's petition as a Rule 32 petition. Nevertheless, according to the majority, this Court should assume that the circuit court treated Bagley's petition as a Rule 32 petition. I do not understand the majority's haste to dismiss Bagley's petition before we know whether the petition was properly reviewed by the circuit court. As an appellate court, this Court should not be in a headlong rush to dismiss a petitioner's claims before we know whether they have been properly reviewed.

Based on the foregoing, I would simply remand the case to the circuit court for that court to set aside its order denying the petition for a writ of habeas corpus and for that court to treat Bagley's petition as a petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P.